

Martin D. Chitwood  
(To Be Admitted *Pro Hac Vice*)  
mchitwood@chitwoodlaw.com  
James M. Wilson, Jr.  
(To Be Admitted *Pro Hac Vice*)  
jwilson@chitwoodlaw.com  
CHITWOOD HARLEY HARNES LLP  
2300 Promenade II  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
Telephone: (404) 873-3900  
Facsimile: (404) 876-4476

Robert C. Schubert (State Bar No. 62684)  
Juden Justice Reed (State Bar No. 153748)  
Willem F. Jonckheer (State Bar No. 178748)  
SCHUBERT & REED LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
Telephone: (415) 788-4220  
Facsimile: (415) 788-0161

Proposed Liaison Counsel

Gregory E. Keller (To Be Admitted *Pro Hac Vice*)  
gkeller@chitwoodlaw.com  
Darren T. Kaplan (To Be Admitted *Pro Hac Vice*)  
dkaplan@chitwoodlaw.com  
Eran Rubinstein (To be Admitted *Pro Hac Vice*)  
erubinstein@chitwoodlaw.com  
Susan Boltz Rubinstein  
(To be Admitted *Pro Hac Vice*)  
srubinstein@chitwoodlaw.com  
11 Grace Avenue, Suite 306  
Great Neck, New York 11021  
Telephone: (516) 773-6090  
Fax: (404) 876-4476

Attorneys for Movants and Proposed Lead Counsel

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

JOEL EICHENHOLTZ, Individually )  
And On Behalf Of All Others )  
Similarly Situated, )

Plaintiff, )

vs. )

VERIFONE HOLDINGS, INC., )  
DOUGLAS G. BERGERON and )  
BARRY ZWARENSTEIN, )  
Defendants. )

CIVIL ACTION NO.: 3:07-CV-06140-MHP

**NOTICE OF MOTION AND MOTION OF THE  
ISRAELI INSTITUTIONAL INVESTOR GROUP  
FOR CONSOLIDATION, APPOINTMENT AS  
LEAD PLAINTIFF AND APPROVAL OF LEAD  
PLAINTIFF'S SELECTION OF LEAD  
COUNSEL; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: March 10, 2008

Time: 2:00 p.m.

Hon. Marilyn Hall Patel

1	PETER LEIN, Individually	)	
	And On Behalf Of All Others	)	CIVIL ACTION NO. 3:07-CV-06195-JSW
2	Similarly Situated,	)	
		)	Judge: Hon. Jeffrey S. White
3		)	
4	Plaintiff,	)	
		)	
5	vs.	)	
		)	
6	VERIFONE HOLDINGS, INC.,	)	
	DOUGLAS G. BERGERON and	)	
7	BARRY ZWARENSTEIN,	)	
		)	
8	Defendants.	)	
9		)	
	<hr/>	)	
10	BRIAN VAUGHN, et al., Individually	)	
	And On Behalf Of All Others	)	CIVIL ACTION NO.: 3:07-CV-06197-VRW
11	Similarly Situated,	)	
		)	Judge: Hon. Vaughn R. Walker
12		)	
13	Plaintiff,	)	
		)	
14	vs.	)	
		)	
15	VERIFONE HOLDINGS, INC.,	)	
	DOUGLAS G. BERGERON and	)	
16	BARRY ZWARENSTEIN,	)	
		)	
17	Defendants.	)	
		)	
18	<hr/>	)	
	ALBERT L. FELDMAN and ELEANOR	)	
19	JEAN FELDMAN, et al.,	)	
	Individually And On Behalf Of All	)	CIVIL ACTION NO.: 3:07-CV-06218-MMC
20	Others Similarly Situated,	)	
		)	Judge: Hon. Maxine M. Chesney
21		)	
22	Plaintiff,	)	
		)	
23	vs.	)	
		)	
24	VERIFONE HOLDINGS, INC.,	)	
	DOUGLAS G. BERGERON and	)	
25	BARRY ZWARENSTEIN,	)	
		)	
26	Defendants.	)	
		)	
27	<hr/>	)	
	DONALD CERINI, Individually	)	
28	And On Behalf Of All Others	)	CIVIL ACTION NO.: 3:07-CV-06228-SC

1	Similarly Situated,	)	
2		)	Judge: Hon. Samuel Conti
3	Plaintiff,	)	
4	vs.	)	
5	VERIFONE HOLDINGS, INC.,	)	
6	DOUGLAS G. BERGERON and	)	
7	BARRY ZWARENSTEIN,	)	
8	Defendants.	)	
9	WESTEND CAPITAL	)	
10	MANAGEMENT, LLC, Individually	)	CIVIL ACTION NO.: 3:07-CV-06237-MMC
11	And On Behalf Of All Others	)	
12	Similarly Situated,	)	Judge: Hon. Maxine M. Chesney
13		)	
14	Plaintiff,	)	
15	vs.	)	
16	VERIFONE HOLDINGS, INC.,	)	
17	DOUGLAS G. BERGERON and	)	
18	BARRY ZWARENSTEIN,	)	
19	Defendants.	)	
20	KURT HILL, Individually	)	
21	And On Behalf Of All Others	)	CIVIL ACTION NO.: 3:07-CV-06238-MHP
22	Similarly Situated,	)	Judge: Hon. Marilyn Hall Patel
23		)	
24	Plaintiff,	)	
25	vs.	)	
26	VERIFONE HOLDINGS, INC.,	)	
27	DOUGLAS G. BERGERON and	)	
28	BARRY ZWARENSTEIN,	)	
	Defendants.	)	
	DANIEL OFFUTT, Individually	)	
	And On Behalf Of All Others	)	CIVIL ACTION NO.: 3:07-CV-06241-JSW
	Similarly Situated,	)	Judge: Hon. Jeffrey S. White

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	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
VERIFONE HOLDINGS, INC.,	)	
DOUGLAS G. BERGERON and	)	
BARRY ZWARENSTEIN,	)	
	)	
Defendants.	)	
<hr/>		
EDWARD FEITEL, Individually	)	
And On Behalf Of All Others	)	CIVIL ACTION NO.: 4:08-CV-00118-CW
Similarly Situated,	)	
	)	Judge: Hon. Claudia Wilken
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
VERIFONE HOLDINGS, INC.,	)	
DOUGLAS G. BERGERON and	)	
BARRY ZWARENSTEIN,	)	
	)	
Defendants.	)	
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**NOTICE OF MOTION AND MOTION**

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

PLEASE TAKE NOTICE that on Monday, March 10, 2008, or as soon thereafter as the matter may be heard in the Courtroom of the Honorable Judge Marilyn Hall Patel located at 450 Golden Gate Avenue, 18th Floor, San Francisco, California 94102, Movants The Phoenix Insurance Company, Ltd., Prisma Provident Funds, Ltd., Prisma Mutual Funds, Ltd., Harel Insurance Company, and Harel Pia Mutual Funds (collectively, the “Israeli Institutional Investor Group” or “Movants” hereinafter) will move, and hereby do move, under §§ 21(D) et seq. of the Securities Exchange Act of 1934 (the “Exchange Act”) as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), for an order (1) consolidating related actions pursuant to Fed. R. Civ. P. 42(a), (2) appointing the Israeli Institutional Investor Group as Lead Plaintiff, and (3) approving the Israeli Institutional Investor Group’s selection of Chitwood Harley Harnes LLP as Lead Counsel and Schubert & Reed LLP as Liaison Counsel.

Movants seek appointment as Lead Plaintiff and approval of Lead Plaintiff’s choice of counsel pursuant to the Securities Exchange Act of 1934, the Federal Rules of Civil Procedure and the PSLRA. The Motion is based upon this Notice of Motion and Motion, Memorandum of Points and Authorities, the Declaration of Martin D. Chitwood, the Court’s complete files and records in this action, and such oral argument as the Court may consider in deciding this Motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Movants The Phoenix Insurance Company, Ltd., Prisma Provident Funds, Ltd., Prisma Mutual Funds, Ltd., Harel Insurance Company, and Harel Pia Mutual Funds respectfully submit this Memorandum of Points and Authorities in Support of Motion of the Israeli Institutional Investor Group for Consolidation, Appointment as Lead Plaintiff and Approval of Lead Plaintiff’s Selection of Lead Counsel. The Phoenix Insurance Company, Ltd. is one of Israel’s leading insurance companies. Prisma Provident Funds, Ltd., Israel’s largest provident fund management



company, and Prisma Mutual Funds, Ltd. are both owned by Prisma Investment House Ltd., the largest private investment house in Israel. Harel Pia is one of Israel's leading mutual fund management firms. Harel Insurance Company, Ltd. is one of Israel's leading insurance and finance groups.

## **I. STATEMENT OF ISSUES**

Presently pending in this District are at least nine related securities fraud class action lawsuits (the "Related Actions")<sup>1</sup> filed against VeriFone Holdings Inc. ("VeriFone" or the "Company") and certain of its officers and directors (hereinafter "Defendants") on behalf of the purchasers of VeriFone common stock during the period August 31, 2006 through December 3, 2007 (the "Class Period").<sup>2</sup> Each action alleges violations of the federal securities laws under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and SEC Rule 10b-5 promulgated under Section 10(b), 17 C.F.R. § 240.10b-5.

Movants first seek to consolidate these Related Actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. Under the PSLRA, prior to selecting a Lead Plaintiff, the Court must decide whether to consolidate the Related Actions. *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii). As soon as practicable after a decision on consolidation has been rendered, the Court is to appoint as the Lead Plaintiff the movant or group of movants with the largest financial interest of those seeking such appointment in the litigation and that otherwise satisfy the requirements of Fed. R. Civ. P. 23.

<sup>1</sup> Movants are filing identical lead plaintiff papers in each of the above-captioned cases using the first-filed case number, 3:07-CV-06140-MHP. In a case filed in the Southern District of Indiana, *Kraft v. VeriFone Holdings, Inc., et al.*, 07-cv-1588 (DFH)(WTL), the plaintiff filed a Notice of Voluntary Dismissal on January 30, 2008.

<sup>2</sup> August 31, 2006 through December 3, 2007, inclusive, is the longest class period alleged in a complaint against VeriFone. *See Lien v. VeriFone Holdings, Inc.*, 3:2007-CV-06195; *Westend Capital Mgt LLC v. VeriFone Holdings, Inc.*, 3:2007-CV-06237. While other complaints allege class periods of September 1, 2006 through November 30, 2007, and March 1, 2007 through November 30, 2007, the longest class period alleged is used for the purpose of the lead plaintiff motion. *See In re Party City Sec. Litig.*, 189 F.R.D. 91, 94 n.3 (D.N.J. 1999) ("The *Catanzarite* Action is relied upon for purposes of this motion because the class period alleged therein covers the longest class period alleged in the actions filed against the Defendants."); *see also In re Star Gas Sec. Litig.*, No. 04-CV-1766 (JBA), 2005 WL 818617 (D. Conn. Apr. 8, 2005) (using the longest class period alleged in determining the largest financial interest on lead plaintiff motion).

1 Here, each action asserts substantially the same claims against the same defendants and  
2 raises substantially the same questions of law and fact. Also, each of these cases alleges violations  
3 of Sections 10(b) and 20(a) of the Exchange Act. Thus, all of the prerequisites for consolidation  
4 under Rule 42(a) are present.

5 Movants also respectfully move to be appointed as Lead Plaintiff pursuant to Section  
6 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. §78u-4(a)(3)(B), as amended by Section 101(a) of  
7 the PSLRA.<sup>3</sup> Movants are suitable and adequate to serve as Lead Plaintiff. As Congress noted in  
8 the Statement of Managers, the PSLRA was intended “to increase the likelihood that institutional  
9 investors will serve as lead plaintiffs” because, among other reasons, institutional investors and  
10 other class members with large amounts at stake “will represent the interests of the plaintiff class  
11 more effectively than class members with small amounts at stake.” H.R. Rep. No. 104-369, at 34  
12 (1995). The Israeli Institutional Investor Group is composed of institutional investors and is  
13 exactly the kind of lead plaintiff Congress intended in passing the PSLRA.  
14

15  
16 Movants have calculated their losses as \$17,916,409 on a first-in first-out (“FIFO”) basis  
17 and \$13,573,404 on a last-in first-out (“LIFO”) basis in connection with their Class Period  
18 purchases of VeriFone common stock. *See* Declaration of Martin D. Chitwood (hereinafter  
19 “Chitwood Decl.”) attached hereto as Exhibit 1. Movants believe that they have incurred the  
20 largest loss of any other movant, and, as such, they have the largest financial interest in the  
21 outcome of this litigation. Consequently, Movants are the most adequate plaintiffs and should be  
22 appointed Lead Plaintiff. Movants have submitted sworn certifications from each fund  
23 demonstrating their desire to serve as the Lead Plaintiff. *See* Exhibit 1, Chitwood Decl. at Exs. A-  
24 E.  
25  
26  
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28 <sup>3</sup> These amendments are contained in Public Law 107-67, entitled the Private Securities Litigation Reform Act of 1995, (109 Stat. 737, 15 U.S.C. §77z-1, 78u-4).

1 Similarly, Movants' motion for approval of its selection of Chitwood Harley Harnes LLP  
2 ("Chitwood") as Lead Counsel and Schubert & Reed LLP ("Schubert") as Liaison Counsel for the  
3 proposed Class should be granted pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v). Chitwood, with  
4 offices in Atlanta and New York, has a national complex litigation practice and has been appointed  
5 by courts around the country to serve as lead counsel in numerous securities class actions,  
6 including by this Court. *See* Exhibit 1, Chitwood Decl. at Ex. F. Schubert also has significant  
7 experience in securities class actions. *See* Exhibit 1, Chitwood Decl. at Ex. G. Chitwood and  
8 Schubert will more than adequately represent the interests of all Class members. Therefore, the  
9 Israeli Institutional Investor Group requests that this Court appoint it as Lead Plaintiff and approve  
10 its chosen counsel, Chitwood as Lead Counsel, and Schubert as Liaison Counsel, for the proposed  
11 Class.  
12

## 13 **II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

14 Plaintiffs in the Related Actions allege that during the Class Period Defendants publicly  
15 issued into the market place, through SEC filings, press releases and other forms of public  
16 communications, materially false and misleading statements and omitted material information by,  
17 *inter alia*, overstating the Company's inventories and understating its cost of net revenues in order  
18 to falsely inflate the Company's revenues and earnings, which caused VeriFone's common stock to  
19 trade at artificially inflated prices reaching a high of \$49.56 on October 30, 2007.  
20

21 On August 31, 2006, Defendants published a press release pertaining to the three month  
22 period ending July 31, 2006 announcing, among other things, net revenues of \$147.6 million, an  
23 increase of 17 percent over the comparable period of fiscal year 2005. Defendant Bergeron stated  
24 that these results constituted VeriFone's tenth consecutive quarter with double digit revenue  
25 growth. He also said that VeriFone was raising its fiscal year 2006 guidance as well as the  
26 guidance for fiscal year 2007. On December 7, 2006, Defendants issued a press release  
27  
28

1 announcing net revenues for the three month period ending October 31, 2006 of \$156.6 million, an  
2 increase of 20 percent over the comparable period in 2005.

3 On March 1, 2007, VeriFone published a release on *Business Wire* regarding its financial  
4 results for the first fiscal quarter ending January 31, 2007. The release announced revenues of  
5 \$216.6 million, which increased 61 percent from the comparable period in 2006. On May 29,  
6 2007, VeriFone published a release on *Business Wire* in which it announced its financial results for  
7 the second fiscal quarter ending April 30, 2007. This release included an announcement of  
8 revenues of \$217.2 million, a 53 percent increase from the comparable period in the previous year.  
9 On September 7, 2007, VeriFone reported its financial results on *Business Wire* for the third fiscal  
10 quarter ending July 31, 2007. The release announced net revenues of \$231.9 million, an increase  
11 of 57 percent from the same period in 2006. These statements were materially false and  
12 misleading when made, and were known by Defendants to be false or were deliberately  
13 disregarded as such.  
14

15 On December 3, 2007, VeriFone announced that it would be restating certain of its financial  
16 statements for fiscal year 2007. This news, which indicated that Defendants had overstated  
17 previously reported inventories and understated cost of net revenues in material amounts, caused  
18 shares of VeriFone to plummet 45 percent in one trading day. VeriFone shares dropped \$22 per  
19 share to close at \$26.03, after a day of trading at 35 times its average trading volume. Additionally,  
20 during the Class Period, Defendants Bergeron and Zwarenstein reaped over \$62.9 million from  
21 selling their own VeriFone stock while the stock thrived at artificially inflated prices. As a result  
22 of the Defendants' manipulative actions, the Movants and other similarly situated members of the  
23 investing public suffered enormous losses. The first notice of the pendency of class action in this  
24 case was published pursuant to the PSLRA on December 4, 2007. *See* Exhibit 1, Chitwood Decl.  
25 at Ex. H. This motion is being filed within 60 days from the date of publication of the first notice.  
26  
27  
28

### 1 **III. POINTS AND AUTHORITIES**

#### 2 **A. The Related Actions Should Be Consolidated For Efficiency.**

3 Consolidation pursuant to Rule 42(a) is proper when actions involve common questions of  
 4 law and fact. *See Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1150 (N.D. Cal. 1999);  
 5 *In re Equity Funding Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 175 (C.D. Cal. 1976). This Court  
 6 has broad discretion under Rule 42 to consolidate cases pending within this district. *See Investors*  
 7 *Research Co. v. United States District Court*, 877 F.2d 777 (9<sup>th</sup> Cir. 1989); *Perez-Funez v. District*  
 8 *Dir., Immigration & Naturalization Serv.*, 611 F. Supp. 990, 994 (C.D. Cal. 1984) (“A Court has  
 9 broad discretion in deciding whether or not to grant a motion for consolidation, although, typically,  
 10 consolidation is favored.”) (citations omitted).

12 Courts have recognized that class action shareholder suits, in particular, are ideally suited  
 13 for consolidation pursuant to Rule 42(a) because consolidation of many actions involving the same  
 14 parties and issues expedites pretrial and discovery proceedings, reduces duplication, and minimizes  
 15 the costs and time expended by all persons involved. *See Equity*, 416 F. Supp. at 176.  
 16 Consolidation further reduces delay or prejudice that may result from prosecuting the Related  
 17 Actions separately. Consolidation of the Related Actions is thus appropriate as common questions  
 18 of law and fact predominate the issues in the actions. *See Fed. R. Civ. P. 42(a)*.

20 Each of the Related Actions asserts essentially the same class claims brought on behalf of  
 21 purchasers of VeriFone common stock who purchased in reliance on Defendants’ materially false  
 22 and misleading statements and/or omissions during the Class Period. Consolidation is appropriate  
 23 when, as here, there are actions involving common questions of law or fact. *See Fed. R. Civ. P.*  
 24 *42(a)* and *Newman v. Eagle Build. Techs.*, 209 F.R.D. 499, 501-02 (S.D. Fla. 2002). *See also*  
 25 *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (2d Cir. 1990).

27 The Israeli Institutional Investor Group respectfully submits that the requirements for  
 28 consolidation are met here and that the Related Actions should be consolidated.

**B. The Israeli Institutional Investor Group is the “Most Adequate Plaintiff”.**

The Israeli Institutional Investor Group should be appointed Lead Plaintiff because it has complied with all of the PSLRA’s requirements, has demonstrated the largest financial interest in this litigation, and otherwise meets the relevant requirements of Fed. R. Civ. P. 23. As the presumptive Lead Plaintiff, Movants’ selection of Chitwood to serve as Lead Counsel and Schubert to serve as Liaison Counsel, pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), should also be approved by the Court.

In an effort to improve the procedure for selection of lead counsel and insure that the most qualified counsel represents the class, Congress enacted guidelines for the organization of complex cases alleging securities fraud. On December 22, 1995, Congress amended the Exchange Act via the enactment of the PSLRA. The PSLRA set forth new guidelines for the organization of complex cases. Section 21D of the PSLRA establishes procedures for selecting the lead plaintiff to oversee class actions brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(B). Specifically, Section 21D(a)(3) provides that, not later than 20 days after the date on which a complaint is filed under the Act,

the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class -- (I) of the pendency of the action, the claims asserted therein, and the purported class period; and (II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

15 U.S.C. § 78u-4(a)(3)(A)(i). In the instant action, on December 4, 2007, notice of the case filed in the United States District Court for the Northern District of California was published in the *Business Wire* on behalf of VeriFone shareholders, by and through counsel, which satisfies the notice required under the PSLRA. *See* Exhibit 1, Chitwood Decl. at Ex. H. Movants are making this motion within sixty days of that notice.

Section 21D(a)(3)(B) directs the Court to consider any motions by purported class members to serve as lead plaintiff in response to any such notice by the later of (i) 90 days after the date of publication, or (ii) as soon as practicable after the Court decides any pending motion to consolidate any actions asserting substantially the same claim or claims. 15 U.S.C. § 78u-4(a)(3)(B)(i). Contemporaneously with moving for appointment as lead plaintiff, the Israeli Institutional Investor Group moves for transfer and consolidation of the Related Actions before one Court. The Court should consolidate the Related Actions and appoint the Israeli Institutional Investor Group as Lead Plaintiff for the consolidated actions.

The PSLRA further provides that the Court shall adopt a rebuttable presumption that the "most adequate plaintiff" to serve as lead plaintiff is the person or group of persons who:

- (aa) has either filed the complaint or made a motion in response to a notice. . . ;
- (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii). In addition, the PSLRA provides that the Court

shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

15 U.S.C. § 78u-4(a)(3)(B)(i). Movants meet each of the foregoing requirements of the PSLRA.

The Israeli Institutional Investor Group is comprised of five sophisticated institutional investors who have calculated their combined losses as \$17,916,409 on a FIFO basis and \$13,573,404 on a LIFO basis resulting from purchases of VeriFone common stock during the Class Period. As of this filing, the Israeli Institutional Investor Group is not aware of any lead plaintiff movant who has sustained greater financial losses in connection with the purchase or other acquisition of VeriFone



common stock during the Class Period. Therefore, the appointment of the Israeli Institutional Investor Group as lead plaintiff satisfies the goals of the PSLRA. Movants will provide strong leadership for the Related Actions, once they are consolidated before one court.

**1. The Israeli Institutional Investor Group Timely Moved to be Appointed Lead Plaintiff.**

The time period within which Class members may move to be appointed Lead Plaintiff in this case expires on February 4, 2008. 15 U.S.C. § 78u-4(a)(3)(A) and (B). Movants' application, filed and served on February 4, 2008, is thus timely. Movants have reviewed the complaint and adopt the allegations and are willing to serve as a representative party on behalf of the Class. *See* Exhibit 1, Chitwood Decl. at Exs. A-E. In addition, Movants have selected and retained competent counsel to represent them and the Class as Lead Counsel and Liaison Counsel. *See* Exhibit 1, Chitwood Decl. at Exs. F and G.

**2. The Israeli Institutional Investor Group Has The Largest Financial Losses.**

According to 15 U.S.C. § 78u-4(a)(3)(B)(iii), the Court shall appoint as lead plaintiff the Class member who represents the largest financial interests in the relief sought by the action. *In re Gemstar-TV Guide Intl. Inc. Sec. Litig.*, 209 F.R.D. 444, 450 (C.D. Cal. 2002). Here, the Israeli Institutional Investor Group calculates their FIFO losses as \$17,916,409 and LIFO losses as \$13,573,404 during the Class Period. The following chart sets forth the Israeli Institutional Investor Group's retained shares and losses:

	Retained Shares	Losses under FIFO	Losses under LIFO
Phoenix Insurance Co.	215,232	\$2,607,957	\$2,607,957
Prisma Provident Funds Ltd	568,477	\$7,388,977	\$7,388,977
Prisma Mutual Funds Ltd	68,613	\$1,105,619	\$1,105,619
Harel Insurance Co.	468,170	\$5,459,765	\$1,116,762
Harel PIA Mutual Funds	155,391	\$1,354,089	\$1,354,089
<b>TOTAL</b>	<b>1,475,883</b>	<b>\$17,916,407</b>	<b>\$13,573,404</b>



Courts have recognized that “one goal of the PSLRA is to have the plaintiff class, represented by a member with a substantial financial interest in the recovery as incentive, to monitor the litigation to prevent it from being ‘lawyer-driven.’” *In re Enron Corp. Sec. Litig.*, 206 F.R.D. 427, 442 (S.D. Tex. 2002). Appointing Movants as lead plaintiff will advance this goal.

An examination of the legislative history of the PSLRA supports the appointment of Movants as lead plaintiff. Congress gave the following explanation for the PSLRA presumption that the plaintiff with the largest financial interest shall be the “most adequate plaintiff”:

The Conference Committee seeks to increase the likelihood that institutional investors will serve as lead plaintiffs by requiring courts to presume that the member of the purported class with the largest financial stake in the relief sought is the “most adequate plaintiff.” . . . The Conference Committee believes that increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions. . . .

Statement of Managers - the “Private Securities Litigation Reform Act of 1995,” Conference Report. H. Rept. No. 104369, at 62 (Nov. 28, 1995 (“Conf. Rep.”); *see also Oxford Health Plans*, 182 F.R.D. 42 (S.D.N.Y. 1998).

One of the stated purposes of the PSLRA was to “protect investors who join class actions against lawyer-driven lawsuits by giving control of the litigation to lead plaintiffs with substantial holdings of the securities of the issuer.” Conf. Rep. P. 27. The PSLRA provisions “are intended to increase the likelihood that parties with significant holdings in issuers, whose interests are most strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiffs counsel.” *Id.* Congress found that the pre-PSLRA system operated

to prevent institutional investors from selecting counsel or serving as lead plaintiff in class actions. [footnote omitted]

\*\*\*

1 Institutional investors and other class members with large amounts at stake  
2 will represent the interests of the plaintiff class more effectively than class  
3 members with small amounts at stake. The claims of both types of class  
4 members generally will be typical.

5 \*\*\*

6 Although the most adequate plaintiff provision does not confer any new  
7 fiduciary duty on institutional investors — and the courts should not  
8 impose such a duty — the Conference Committee nevertheless intends  
9 that the lead plaintiff provision will encourage institutional investors to  
10 take a more active role in securities class action lawsuits. Scholars predict  
11 that increasing the role of institutional investors will benefit both injured  
12 shareholders and courts: “Institutions with large stakes in class actions  
13 have much the same interests as the plaintiff class generally; thus, courts  
14 could be more confident settlements negotiated under the supervision of  
15 institutional plaintiffs were “fair and reasonable” than is the case with  
16 settlements negotiated by unsupervised plaintiffs’ attorneys.

17 Conf. Rep. 29-30.

18 As the foregoing makes clear, by enacting the PSLRA, Congress sought to insure that  
19 securities class action litigation would be led by strong clients with substantial interests in the  
20 outcome of the litigation. *See also Gluck v. CellStar Corp.*, 976 F. Supp. 542, 548 (N.D. Tex.  
21 1997). Thus, Congressional intent on this point is clear — institutional investors, such as the  
22 Israeli Institutional Investor Group, who move to be appointed lead plaintiff should be appointed  
23 by the Court to effectuate the purposes of the PSLRA.

24 Similarly, the Securities Exchange Commission (the “SEC”), has encouraged institutional  
25 investors to serve as lead plaintiff in cases alleging securities fraud:

26 The Securities and Exchange Commission is stepping up its efforts to  
27 persuade institutional shareholders to serve as lead plaintiffs in securities  
28 class-action lawsuits.

[Former] SEC Chairman Arthur Levitt said Tuesday [he was] embarking  
upon a personal drive to raise the issue whenever he meets with  
institutional investors . . .

\*\*\*

1 “This is a real civic responsibility that [institutional investors] should  
2 embrace and one we should actively pursue,” Levitt told a U.S. House of  
Representatives panel on securities.

3 See Beckett, Paul “SEC Steps Up Effort to Induce Institutions to Lead Suits,” Dow Jones News  
4 Service, Tuesday, October 21, 1997. Thus, the SEC also encourages the appointment of  
5 institutional investors as lead plaintiff.

6 The Israeli Institutional Investor Group consists of five institutional investors, which are a  
7 cohesive, “small group of manageable size that is capable of joint decisionmaking regarding the  
8 litigation.” *Takeda v. Turbodyne Technologies, Inc.* 67 F. Supp. 2d 1129, 1135 (C.D. Cal. 1999).  
9 Movants will remain actively involved in the litigation through the instruction and guidance they  
10 will provide to their chosen counsel, Chitwood, a law firm with significant experience in this type  
11 of litigation. And as discussed herein, to the best of their knowledge, Movants have suffered the  
12 largest losses in this case, and thus satisfy the largest financial interest requirement to be appointed  
13 as Lead Plaintiff for the Class.  
14

### 15 **3. The Israeli Institutional Investor Group Otherwise Satisfies the** 16 **Requirements of Rule 23.**

17 The final requirement of the PSLRA for the appointment of lead plaintiff is that a lead  
18 plaintiff must “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil  
19 Procedure.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule 23 provides that a party may serve as a  
20 class representative if the following four requirements are satisfied:  
21

22 (1) the class is so numerous that joinder of all members is impracticable,  
23 (2) there are questions of law or fact common to the class (3) the claims or  
24 defenses of the representative parties are typical of the claims or defenses  
of the class, and (4) the representative parties will fairly and adequately  
protect the interests of the Class.

25 Fed. R. Civ. P. 23(a). See *In re Cavanaugh*, 306 F.3d 726, 732 (9th Cir. 2002) (once court  
26 “identifies the plaintiff with the largest stake in the litigation, further inquiry must focus on that  
27 plaintiff alone and be limited to determining whether he satisfies the other statutory requirements”).  
28

1 For purposes of appointing the lead plaintiff, the Court need not raise its inquiry to the level  
2 required in ruling on a motion for class certification. “While the PSLRA requires that the lead  
3 plaintiff satisfy all of Rule 23’s requirements, the third and fourth requirements of Rule 23 –  
4 typicality and adequacy – are the key factors for a court’s lead plaintiff determination.” *Armour v.*  
5 *Network Assoc.*, 171 F. Supp. 2d 1044, 1051 (N.D. Cal. 2001). As explained below, the Israeli  
6 Institutional Investor Group satisfies both the typicality and adequacy requirements of Rule 23,  
7 thereby justifying its appointment as Lead Plaintiff.  
8

9 a. Movants’ claims are typical of the claims of other class members.

10 The Israeli Institutional Investor Group satisfies the typicality requirements of Rule  
11 23(a)(3). “The typicality requirement is satisfied when the named plaintiffs have (1) suffered the  
12 same injuries as the absent class members, (2) as a result of the same course of conduct, and (3)  
13 their claims are based on the same legal issues.” *Armour*, 171 F. Supp. 2d at 1052. This does not  
14 require that the representative claims be substantially identical, rather that they are “reasonable co-  
15 extensive with those of absent class members.” *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011 (9th Cir.  
16 1998).  
17

18 Movants seek to represent a Class of purchasers of VeriFone common stock that have  
19 identical, non-competing and non-conflicting interests. Movants’ claims and damages arise from  
20 the same set of facts and under the same legal theories as for all other Class members. The Israeli  
21 Institutional Investor Group contends that Defendants violated applicable securities laws by  
22 publicly disseminating a series of materially false and misleading statements and omitting material  
23 facts in the Company’s statements and financial projections. Like other members of the proposed  
24 Class, Movants purchased or otherwise acquired VeriFone common stock at prices inflated by  
25 Defendants’ misrepresentations and omissions and thus suffered damages. Movants satisfy the  
26 typicality requirement because, just like all other Class members, they: (1) purchased or acquired  
27 VeriFone common stock during the Class Period; (2) at prices artificially inflated by Defendants’  
28

1 materially false and misleading statements and/or omissions; and (3) suffered economic loss as a  
2 result of the price of VeriFone common stock declining after the revelation of the  
3 misrepresentations and/or information that had been concealed from the market thereby removing  
4 the inflation from VeriFone's stock price. Thus, Movants' claims are typical of those of other  
5 Class members given that all the claims arise out of the same course of events.

6  
7 b. The Israeli Institutional Investor Group will adequately represent the Class.

8 The representative parties must fairly and adequately protect the interests of the Class  
9 pursuant to Rule 23(a)(4). "This determination focuses around two questions: (1) do the interests  
10 of the class representative coincide with those of the class, and (2) does the representative have the  
11 ability to prosecute the action vigorously through the services of competent counsel." *Armour*, 171  
12 F. Supp. 2d at 1052. In addition, the class representative must have a sufficient interest in the  
13 outcome of the case to ensure vigorous advocacy. *Takeda*, 67 F. Supp. 2d at 1137. Movants are  
14 well situated to adequately represent the interests of the Class.

16 As detailed above, the Israeli Institutional Investor Group is an adequate representative of  
17 the Class because it shares common questions of law and fact with the members of the Class, and  
18 its claims are typical of the claims of other class members. Moreover, as evidenced by the large  
19 damages suffered by the Israeli Institutional Investor Group as a result of purchasing VeriFone  
20 common stock at artificially inflated prices, the interests of Movants are aligned clearly with those  
21 of the members of the Class.

23 Additionally, the Israeli Institutional Investor Group already has taken significant steps  
24 demonstrating that it has protected, and will continue to protect, the interests of the Class. For  
25 example, Movants have executed Certifications detailing their Class Period transactions and  
26 expressing willingness to serve as Lead Plaintiff. *See* Exhibit 1, Chitwood Decl. at Exs. A-E. The  
27 Israeli Institutional Investor Group has moved this Court to be appointed as Lead Plaintiff in this  
28

1 action. Movants also have retained competent and experienced counsel who will be able to  
2 conduct this complex litigation in a professional manner.

3 **C. The Court Should Approve Movants' Choice of Counsel.**

4 Pursuant to 15 U.S.C § 78u-4(a)(3)(B)(v), the Lead Plaintiff shall, subject to Court  
5 approval, select and retain counsel to represent the Class. The Court should not disturb the Lead  
6 Plaintiff's selection unless "necessary to protect the interest of the plaintiff class." 15 U.S.C. §  
7 78u-4(a)(3)(B)(iii)(II)(aa). Movants have chosen and retained Chitwood to serve as Lead Counsel  
8 and Schubert to serve as Liaison Counsel for the Class. Both of these firms possess extensive  
9 experience in the area of securities litigation and have successfully prosecuted numerous securities  
10 fraud class actions on behalf of injured investors. *See* Exhibit 1, Chitwood Decl. at Exs. F and G.  
11 Movants will advance this case for the benefit of the Class through their efforts and the efforts of  
12 their counsel. Adequacy and all other requirements of Rule 23 and the PSLRA are satisfied. Thus,  
13 the Court may be assured that, in the event this motion is granted, the members of the Class will  
14 receive the highest caliber of legal representation available.  
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1 **IV. CONCLUSION**

2 For all the foregoing reasons, Movants respectfully request that the Court grant the instant  
3 motion and:

- 4 (i) consolidate for all purposes the Related Actions against Defendants;  
5 (ii) appoint the Israeli Institutional Investor Group as Lead Plaintiff pursuant to  
6 §21D(a)(3)(B) of the PSLRA; and  
7 (iii) approve Movants' choice of Chitwood Harley Harnes LLP as Lead Counsel and  
8 Schubert & Reed LLP as Liaison Counsel, pursuant to §21D(a)(3)(B)(v) of the  
9 PSLRA.  
10

11 Dated: February 4, 2008

Respectfully submitted,

12  
13 **SCHUBERT & REED LLP**

14 By: s/ Juden Justice Reed

15 Robert C. Schubert (State Bar No. 62684)  
16 Juden Justice Reed (State Bar No. 153748)  
17 Willem F. Jonckheer (State Bar No. 178748)  
18 Three Embarcadero Center, Suite 1650  
19 San Francisco, CA 94111  
20 Telephone: (415) 788-4220  
21 Facsimile: (415) 788-0161

*Proposed Liaison Counsel*

22 **CHITWOOD HARLEY HARNES LLP**

23 Martin D. Chitwood  
24 James M. Wilson, Jr.  
25 2300 Promenade II  
26 1230 Peachtree Street, N.E.  
27 Atlanta, Georgia 30309  
28 Telephone: (404) 873-3900  
Facsimile: (404) 876-4476

**CHITWOOD HARLEY HARNES LLP**

Gregory E. Keller  
Darren T. Kaplan  
Eran Rubinstein

Susan Boltz Rubinstein  
11 Grace Avenue, Suite 306  
Great Neck, New York 11021  
Telephone: (516) 773-6090  
Fax: (404) 876-4476

*Counsel for Movants and Proposed Lead Counsel*



**CERTIFICATE OF SERVICE**

I hereby certify that on February 4, 2008, I electronically filed the foregoing **NOTICE OF MOTION AND MOTION OF THE ISRAELI INSTITUTIONAL INVESTOR GROUP FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record for Civil Action No.3:07-CV-06140:

Nicole C. Lavalley  
[nlavalle@bermanesq.com](mailto:nlavalle@bermanesq.com)  
Joseph J. Tabacco, Jr.  
[jtabacco@bermanesq.com](mailto:jtabacco@bermanesq.com)  
Berman DeValerio, et al.  
425 California St., Suite 2100  
San Francisco, CA 94104

Steve W. Berman  
[steve@hbsslaw.com](mailto:steve@hbsslaw.com)  
Hagens Berman, et al.  
1301 Fifth Ave., Suite 2900  
Seattle, WA 98101  
700 Stewart St.  
Seattle, WA 98101

Alan R. Plutzik  
[aplutzik@bramsonplutzik.com](mailto:aplutzik@bramsonplutzik.com)  
Lawrence T. Fisher  
[ltfisher@dbramsonplutzik.com](mailto:ltfisher@dbramsonplutzik.com)  
Schiffrin Barroway, et al.  
2125 Oak Grove Rd., Suite 120  
Walnut Creek, CA 94598

Laurence D. King  
[lking@kaplanfox.com](mailto:lking@kaplanfox.com)  
Linda M. Fong  
[lfong@kaplanfox.com](mailto:lfong@kaplanfox.com)  
Kaplan Fox & Kilsheimer LLP  
350 Sansome St., Suite 400  
San Francisco, CA 94104

Reed R. Kathrein  
[reed@hbsslaw.com](mailto:reed@hbsslaw.com)  
Hagens Berman, et al.  
715 Hearst Ave., Suite 202  
Berkeley, CA 94710

Shawn A. Williams  
[shawnw@csgrr.com](mailto:shawnw@csgrr.com)  
Couglin Stoia, et al.  
100 Pine St., Suite 2600  
San Francisco, CA 94111

Lewis S. Kahn  
[Lewis.kahn@kgsccounsel.com](mailto:Lewis.kahn@kgsccounsel.com)  
Kahn Gauthier Swick LLC  
650 Poydras St., Suite 2150  
New Orleans, LA 70130

Daniel C. Girard  
[girardgibbs@girardgibbs.com](mailto:girardgibbs@girardgibbs.com)  
Aaron M. Sheanin  
[ams@girardgibbs.com](mailto:ams@girardgibbs.com)  
Jonathan K. Levine  
[jkl@girardgibbs.com](mailto:jkl@girardgibbs.com)  
Girard Gibbs LLP  
601 California St., Suite 1400  
San Francisco, CA 94108

Notice of Motion and Motion of the Israeli Institutional Investor Group for Consolidation, Appointment As Lead Plaintiff and Approval of Lead Plaintiff's Selection of Lead Counsel; Memorandum of Points and Authorities in Support Thereof. No. 3:07-CV-06140

1 Michael H. Steinberg  
2 [steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com)  
3 Brendan P. Cullen  
4 [cullenb@sullcrom.com](mailto:cullenb@sullcrom.com)  
5 Sullivan & Cromwell  
6 1888 Century Park East  
7 Los Angeles, CA 90067

Francis A. Bottini, Jr.  
[frankb@johnsonbottini.com](mailto:frankb@johnsonbottini.com)  
Frank J. Johnson  
[frankj@johnsonbottini.com](mailto:frankj@johnsonbottini.com)  
Johnson Bottini, LLP  
655 W. Broadway, Suite 1400  
San Diego, CA 92101

8 and I have mailed the foregoing document by United States Postal Service, by first class mail,  
9 postage prepaid, to the following attorneys:

10 D. Seamus Kaskela  
11 Richard A. Maniskas  
12 Schiffrin Barroway Topaz & Kessler LLP  
13 280 King of Prussia Road  
14 Radnor, PA 29087

Brett Michael Weaver  
Derek J. Wilson  
Johnson Bottini, LLP  
655 West Broadway  
Suite 1400  
San Diego, CA 92101

15 Jeffrey P. Campisi  
16 Joel B. Strauss  
17 Kaplan, Fox & Kilsheimer LLP  
18 850 Third Avenue  
19 14th Floor  
20 New York, NY 10022

21 Jeffrey A. Klafter  
22 Klafter & Olsen LLP  
23 1311 Mamaroneck Avenue  
24 Suite 220  
25 White Plains, NY 10605

26 David C. Walton  
27 Darren Jay Robbins  
28 Coughlin Stoia Geller et al  
655 West Broadway  
Suite 1900  
San Diego, CA 92101-3301

Karen Hanson Riebel  
Lockridge Grindal Nauen  
100 Washington Avenue, S.  
Suite 2200  
Minneapolis, MN 55401-2179

Notice of Motion and Motion of the Israeli Institutional Investor Group for Consolidation, Appointment As Lead Plaintiff and Approval of Lead Plaintiff's Selection of Lead Counsel; Memorandum of Points and Authorities in Support Thereof. No. 3:07-CV-06140

1 This 4th day of February, 2008.

2  
3 s/ Juden Justice Reed

4 Juden Justice Reed

5 **SCHUBERT & REED LLP**

6 Three Embarcadero Center, Suite 1650

7 San Francisco, CA 94111

8 Telephone: (415) 788-4220

9 Facsimile: (415) 788-0161